

(25,224)

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1915.

No. 941.

HARRY T. HALL, SUPERINTENDENT OF BANKS AND
BANKING OF THE STATE OF OHIO, APPELLANT,

vs.

THE GEIGER-JONES COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF OHIO.

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TRANSCRIPT OF RECORD.

Bill of Complaint—Filed November 17, 1915.

In the District Court of the United States, Southern District of Ohio, Eastern Division.

The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of the State of Ohio, Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Harry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.

[No. 51.]

Bill of Complaint. No. 51.

The plaintiff, The Geiger-Jones Company, a corporation, complains of the defendants, Edward C. Turner, attorney general of the state of Ohio, and Harry T. Hall, superintendent of banks and banking of the state of Ohio, and says:

1. That the plaintiff, The Geiger-Jones Company, a corporation, is a corporation organized under the laws of the state of Ohio with its office and principal place of business at Canton, in the said state of Ohio; that the issued and outstanding stock of said corporation is \$1,655,200.00, all of which has been fully paid up, and that it has an existing surplus of \$285,000.00; that the general nature of the business in which said corporation is engaged and in which it is authorized to engage, as appears from its articles of incorporation, is that of buying and selling investment securities, its business consisting principally of buying and selling the stocks and bonds of industrial corporations; that as a corporation it has been since the year 1907 actively engaged in the marketing of the kinds of securities aforementioned, with the result that it has sold and there is now outstanding in the hands of persons to whom it has sold, securities amounting to from twenty million to twenty-five million dollars, par value; that the said securities so sold are those of corporations whose total outstanding securities amount to between fifty and sixty millions of dollars, of which the aforementioned twenty to twenty-five millions of dollars of securities is a part; that said The Geiger-Jones Company has a regular established clientele of approximately eleven thousand persons residing in the state of Ohio and other states; that the stockholders in

the plaintiff company consist of several hundred persons residing in the state of Ohio and in other states; that the securities above referred to as having been sold and disposed of by plaintiff consist of the securities of over twenty corporations organized and existing under and by virtue of the laws of Ohio and other states and foreign countries; that not one of the eleven thousand clients to whom the plaintiff has sold the securities above referred to has ever suffered or incurred any loss because of his investment in said securities; that the plaintiff in the course of its business has marketed and is now marketing the securities of Ohio corporations and citizens in other states of the United States and in foreign countries; that it has sold and is now selling the securities of citizens and corporations of other states and foreign states in the state of Ohio and in other states, and that the said plaintiff is and has been engaged in intrastate, interstate and foreign commerce.

2. The plaintiff avers that the legislature of the state of Ohio at the regular session of 1913 passed an act "To regulate the sale of bonds, stocks and other securities and of real estate not located in Ohio and to prevent fraud in such sale," which said act is contained in Volume 103 of the Laws of Ohio, pages 743 to 753, inclusive, which said act was duly approved by James M. Cox, governor of said state of Ohio at the special session of the Eightieth General Assembly, which began January 14, 1914, amended said law by the passage of an act entitled "To amend Sections 6373-1, 6373-2, 6373-3, 6373-4, 6373-5, 6373-6, 6373-7, 6373-8, 6373-9, 6373-10, 6373-11, 6373-12, 6373-13, 6373-14, 6373-15, 6373-16, 6373-24 of the General Code of Ohio to further regulate the sale of bonds, stocks and other securities and of real estate not located in Ohio, and to prevent fraud in such sales, which said amendatory act was approved by the governor of said state on February 17, 1914, and filed in the office of the secretary of state on February 19, 1914, which said amendatory act is found in Volume 104 of Ohio Laws, pages 110 to 119, inclusive; that the legislature of the state of Ohio at the special session of 1914, which began July 20, 1914, amended said amendatory act as appears in part of an act entitled "An act to amend Sections 712, 714, 716, 724, 736, 742-3, 742-4, 742-5, 742-9, 742-16, 6373-16 and 12898 of the General Code relative to the duties of the superintendent of banks and banking as appears in Volume 105-106, pages 363 and 364, inclusive. Attached hereto and made a part hereof is a copy of all sections of said original act and said amendatory acts which now purport to be in force and which are unre-

pealed. Said copy is marked Exhibit A and is a copy of what is known as the Blue Sky Law and which will be found in Sections 6373-1 to 6373-24, inclusive, of the General Code of Ohio to which reference is hereby made.

3. The defendants and each of them pretending and assuming to act in virtue of the statutes aforesaid and without any right, authority or justification in law have threatened, and unless restrained, will immediately revoke the license granted to plaintiff to do business as a dealer in the securities aforesaid to the great and irreparable injury to this plaintiff and to the eleven thousand holders of said securities as well as the companies concerned therein, representing investments in excess of \$50,000,000.00.

4. Said defendant, Edward C. Turner, attorney general of the state of Ohio, without authority or without justification in law, threatens to and will, unless restrained by this court, give to said defendant, Harry T. Hall, superintendent of banks and banking of the state of Ohio, a written certificate, opinion or recommendation advising and directing said defendant, Harry T. Hall, superintendent of banks and banking, aforesaid to revoke the license now held by this plaintiff; and said defendant, Edward C. Turner, threatens to and will cause said certificate, opinion or recommendation to become and remain a public document in the files of said superintendent of banks and banking and to cause the same to be published broadcast by the newspapers of the said state and country to the great and irreparable damage to this plaintiff and said eleven thousand security holders and to their irremediable wrong, all without warrant or justification in law; and said defendant, Edward C. Turner, attorney general of Ohio, has, without warrant or authority in law, already advised said defendant, Harry T. Hall, superintendent of banks and banking, that it will be his duty to follow the said recommendation or opinion or certificate of said attorney general and to cancel said license and said attorney general has advised said superintendent of banks and banking that he is and will be without discretion in the premises. The plaintiff further avers that said defendant, Harry T. Hall, superintendent of banks and banking, believing that he is bound by the opinion of the attorney general and that he is without discretion in the premises, will, in reliance thereon and in compliance therewith, without warrant of law, revoke said license unless restrained by order of this court.

5. The plaintiff avers that said act of the legislature of 1913, and said amendatory acts and each of them are

unconstitutional, invalid and void: (1) because they deprive the plaintiff of its right to sell in the state of Ohio valuable stocks, bonds and securities, which is depriving it of its property without due process of law; (2) that they deny the plaintiff as well as all of said security holders aforesaid and the companies aforesaid the equal protection of the laws as guaranteed to it and them under the 14th amendment to the Federal Constitution; (3) that said acts impose a burden upon and practically amount to prohibition of interstate commerce, which is contrary to Section 8 of Article I of the Constitution of the United States; (4) because said acts attempt to place in the superintendent of banks and banking of the state of Ohio legislative, executive and judicial powers, which is contrary to Articles 1, 2, 3 and 4 of the Constitution of the state of Ohio; (5) because said acts delegate to the superintendent of banks and banking of the state of Ohio legislative and judicial powers, which is in violation of the Constitution of the state of Ohio, and (6) because said acts and each of them are in violation of Article 5 of the Constitution of the United States, in that they deprive the plaintiff and said eleven thousand holders of said securities of its and their property without due process of law.

6. The plaintiff avers that if said defendant, Edward C. Turner, attorney general of Ohio as aforesaid, is permitted to give said certificate, opinion or recommendation to said defendant, Harry T. Hall, superintendent of banks and banking of said state, or if said defendant, Harry T. Hall, superintendent of banks and banking, is permitted to act upon said certificate or to revoke said license, and if said defendants or either of them be permitted to give publicity to their proceedings herein referred to, irreparable injury will be done to the property rights of the plaintiff and to said eleven thousand security holders, their property will be depreciated in value and this plaintiff is without remedy to prevent the same save in a court of equity.

7. The plaintiff avers that if said defendants and each of them are permitted to proceed under pretense of enforcing said unconstitutional, invalid and void acts and statutes as they are attempting, are threatening and will do, unless restrained by this court, and if said license by revoked, this plaintiff will be prevented from conducting and prosecuting its said business free from the interferences of said officials acting under said void law; will be deprived of the profits arising from the operation and conduct thereof, and its hundreds of stockholders and

said eleven thousand security holders will suffer thereby and will be irreparably damaged and injured.

8. Plaintiff says that its assets consist principally of securities, stocks and bonds issued by the said corporations hereinbefore referred to, and that any action taken by said attorney general or said superintendent of banks and banking, even without warrant of law will necessarily, because of the very nature of the stock and bond business, affect the market value thereof, and that any proceedings by said attorney general or said superintendent of banks and banking, or a publication thereof, will, without reason and because of such unauthorized acts, cause irremediable loss and damage to said plaintiff and to the holders of the securities of these various companies hereinbefore mentioned.

9. The plaintiff being remediless, save and except in a court of equity where matters of this kind are alone and properly cognizable, prays that the defendants, and each of them, be made parties defendant to this bill, and that proper process shall issue against them, and each of them; that a restraining order be issued by this honorable court enjoining, inhibiting and restraining the said defendant, Edward C. Turner, attorney general, from giving said certificate, opinion or recommendation to his said co-defendant, Harry T. Hall, superintendent of banks and banking; enjoining, inhibiting and restraining the said defendant, Harry T. Hall, superintendent of banks and banking, from acting upon such certificate, opinion or recommendation; and further restraining said Harry T. Hall, superintendent of banks and banking, from revoking, or attempting to revoke such license; enjoining, inhibiting and restraining said defendants, and each of them, from publishing or placing on the files any action, or the proceedings had or being had in connection with said license, or said certificate, opinion or recommendation, or the substance thereof, and enjoining, inhibiting and restraining said defendants, and each of them, from attempting to act in virtue of or under favor of said unconstitutional, invalid and void statutes and pretended laws aforesaid, or from in any wise interfering with this plaintiff in the continuation of its business, as hereinbefore referred to; that upon a preliminary hearing an interlocutory injunction be granted declaring said acts and each of them of the legislature of Ohio invalid, unconstitutional and void; that at said preliminary hearing an interlocutory injunction be granted enjoining, inhibiting and restraining said defendants, and each of them, from doing any of the things hereinbefore threatened and complained of, and enjoining them from in-

terfering with, preventing, molesting or threatening the plaintiff in the sale or soliciting of the sale of stocks or other securities, as hereinbefore referred to, and from the peaceable and unmolested continuance of its business, and that upon the final hearing of this cause such interlocutory injunction be made perpetual, and that in the said restraining order and in the said interlocutory injunction, and by the terms thereof, the said defendants, and each of them, be enjoined from any further activities against this plaintiff in relation to said license or in the conduct of its said business, and for such other, further and general relief as under the facts and circumstances of this case this honorable court may see fit to grant or as to equity may seem meet and proper.

And for this the plaintiff will ever pray, etc.

The Geiger-Jones Company,
a Corporation.

E. N. Huggins,
Timothy S. Hogan,
Solicitors for Plaintiff.

M. B. & H. H. Johnson,
A. M. McCarty,

Of Counsel.

State of Ohio, County of Franklin, ss.:

This day personally appeared before the undersigned, a notary public in and for Franklin county, Ohio, Harry M. Geiger, who, after being first duly sworn, upon oath says that he is the president of the Geiger-Jones Company, being duly authorized in the premises; that he has read the said bill and knows the contents thereof, and that the facts and statements therein contained are true.

Harry M. Geiger.

Sworn to and subscribed in my presence by the said Harry M. Geiger on this seventeenth day of November, 1915.

[Seal.] Boyd B. Haddox,
Notary Public in and for the County and State Afore-
said.

"Exhibit A."

Blue Sky Law.

As Amended, 1915.

See. 6373-1. Except as otherwise provided in this act, no dealer shall, within this state, dispose or offer to dispose of any stock, stock certificates, bonds, debentures, collateral trust certificates or other similar instruments (all hereinafter termed "securities") evidencing title to or interest in property, issued or executed by any private or quasi-public corporation, co-partnership or association (except corporations not for profit), or by any taxing subdivision of any other state, territory, province or foreign government, without first being licensed so to do as hereinafter provided.

See. 6373-2. The term "securities," as used in this act, shall not be deemed to include conveyances of real estate; or, where the same have not been judicially declared invalid, and where, at the time of such sale, there is no default in payment of any part of the interest or principal of the same:

1. Mortgage bonds and notes (other than corporate bonds where more than fifty per cent. of the entire issue is not included in a sale to one purchaser) secured by a bona fide mortgage on real estate;

2. Securities of quasi-public corporations, the issuance of which has been authorized by the public service commission of this state;

3. The stock or obligation of any national bank, or of any bank, trust company or building and loan association, organized under the laws of this state and subject to examination and supervision by the proper authorities thereof.

The term "dealer," as used in this act, shall be deemed to include any person or company, except national banks, disposing or offering to dispose, of any such security, through agents or otherwise, and any company engaged in the marketing or flotation of its own securities either directly or through agents or underwriters or any stock promotion scheme whatsoever, except:

- (a) An owner, not the issuer of the security, who disposes of his own property, for his own account; when such disposal is not made in the course of repeated and successive transactions of a similar character by such owner; or a natural person, other than the underwriter of the security, who is a bona fide owner of the security and disposes of his own property for his own account;

(b) One who, in a trust capacity created by any law of the United States or of this or any other state or by judicial authority, lawfully disposes of any property embraced within such trust;

(c) A bank or trust company, organized under the laws of this state and subject to examination and supervision by the proper authority thereof, selling a security for a licensee, other than the issuer or underwriter thereof, at a commission of not more than two per cent., where such bank or trust company is not a regular dealer in securities;

(d) One, not the issuer, who disposes of securities to a licensee under this act or to a company which, as a part of its regular business, deals in or holds such securities;

(e) A pledgee, selling in the ordinary course of business, a security pledged to him as security for debt in good faith and not for the purpose of avoiding the provisions of this act;

(f) The issuer, organized under the laws of this state where the disposal in good faith and not for the purpose of avoiding the provisions of this act, is made for the sole account of the issuer, without any commission and at a total expense of not more than two percentum of the proceeds realized therefrom plus five hundred dollars and where no part of the issue to be disposed of is issued, directly or indirectly, in payment for patents, services, good will or for property not located in this state; provided that the president and secretary, or the incorporators if done before organization, of the issuer shall, prior to such disposal, file with the "commissioner" a written statement setting forth the existence of all such facts and that such issuer is formed for the purpose of doing business within this state.

As used in this act, the term "company" shall include any corporation, co-partnership or association, incorporated or unincorporated, and whenever and wherever organized; "dispose of" shall be construed to mean "sell, barter, pledge or assign for a valuable consideration or obtain subscriptions for"; "issuer," the original issuer of the security; and, where the context demands it, words in the present tense include the future tense; in the masculine gender include the feminine and neuter gender; in the singular number include the plural, and in the plural, the singular number; the word "whoever" includes all persons, natural and artificial, principals, agents and employees; "and" may be read "or," and "or" "and".

Sec. 6373-3. Before such license shall be issued to any dealer, there shall be filed by him with the superintendent of banks, herein termed the "commissioner," together with a filing fee of five dollars, an application for such license, together with information, in such form as shall be determined by such "commissioner," setting forth:

(a) The names and addresses of the directors and officers if such applicant be a corporation or association and of all partners if it be a partnership, and of the person if the applicant be an individual, together with names and addresses of all agents of such applicant assisting in the disposal of such securities;

(b) Location of the applicant's principal office and of his principal office in the state, if any;

(c) The general plan and character of the business of said applicant, together with references which the "commissioner" shall confirm by such investigation as he may deem necessary, establishing the good repute in business of such applicant, directors, officers, partners and agents.

If the applicant be a corporation organized under the laws of any other state, territory or government, or have its principal place of business therein, it shall also file a copy of its articles of incorporation certified by the proper officer of such state, territory or government, and of its regulations and by-laws; and if it be an unincorporated association, a certified copy of its articles of association, or deed of settlement.

The applicant at the same time shall also file with said "commissioner" a duly executed written instrument, irrevocable, consenting that any action brought against such applicant, arising out of and founded upon the fraudulent disposal of such securities by him or his agents, may be brought in Franklin county, and that, in the event that proper service of process cannot be had upon such applicant in such county, service of process made therein by the sheriff of such county, by sending a copy thereof by registered mail, at least thirty days prior to taking judgment in such case, addressed to such applicant at the place of his principal office named in his application or such other place as the applicant may thereafter designate in writing filed with the "commissioner," shall have the same effect as if personally made upon the applicant according to the laws of this state.

Sec. 6373-4. Notice of all applications for registration as a licensed dealer in such securities shall be published in a daily newspaper of general circulation in the city where the applicant's principal place of business in the state is located, or in the city of Columbus, if the appli-

eant has no such place of business in the state, and no such application shall be acted on by the "commissioner" until the expiration of one week from the date of such publication, but shall be acted upon within twenty days after proof of such application has been filed with him. If the "commissioner" be satisfied of the good repute in business of such applicant and named agents, he shall, upon the payment of an annual fee of fifty dollars, and an additional fee of five dollars for each agent named in the application, register the applicant as a licensed dealer in such securities, and issue to him a license, containing the name of the applicant and all such agents, renewable annually upon payment of such annual fee, unless revoked as herein provided. The expense of all publications provided for in this act shall be paid by the applicant for license. Pending a final disposition of such application the "commissioner" may grant temporary permission to such applicant to transact business as a dealer under this act. All such renewals shall be made as of the first day of January in each calendar year upon proper application therefor, filed not less than twenty nor more than sixty days next preceding such date.

Sec. 6373-5. Such license shall be taken out at the beginning of each calendar year, but it may be issued at any time for the remainder of such year, and in such case the annual fee shall be reduced four dollars for each expired month, but in no case shall it be less than ten dollars. Upon the payment of a fee of five dollars for each specified agent not named in such license the same may at any time be amended or supplemented to include such agent. Upon the written request of such applicant, accompanied by a fee of two dollars, such license shall be revoked as to any agent or agents of such applicant, and an amended license shall thereupon be issued for such applicant and his remaining agents; and thereafter the applicant shall not be bound by the acts of the agent whose license has been revoked. Notice of such amendments shall also be published as aforesaid.

Sec. 6373-6. Such "commissioner" may at any time revoke any such license, or refuse to renew the same, upon ascertaining that the licensee:

- (a) Is of bad business repute;
- (b) Has violated any provision of this act; or
- (c) Has engaged, or is about to engage, under favor of such license, in illegitimate business or in fraudulent transactions.

No dealer whose license has been revoked shall be re-licensed within six months from the date of such revocation.

The "commissioner" shall at once lay before the prosecuting attorney of the proper county any evidence which shall come to his knowledge of criminality under this act.

See. 6373-7. At least five days before revoking or refusing to grant or renew a license, the "commissioner" shall send by registered mail to the licensee, at the address named in the application written notice of his intention so to do, specifying therein the reasons for such revocation or refusal.

See. 6373-8. Any one whose license shall be refused or revoked or to whom a renewal of license may be denied, may file, within thirty days thereafter, in the court of common pleas of Franklin county, a petition against the "commissioner," officially, as defendant, alleging therein, in brief detail, the plaintiff's qualifications to be licensed and praying for a reversal of the official action complained of. Upon service of summons upon said defendant, returnable within three days from its date, but otherwise made as in civil actions, he shall, within one week from such return day, file an answer, in which he shall allege by way of defense the grounds previously assigned in his notice to such applicant or licensee, and such other grounds as shall, in the meantime, accrue or be discovered. All allegations of the answer shall be deemed to stand denied without further pleading and, upon application of either party, the cause shall be advanced and heard without delay. Merely technical irregularities in the procedure of such "commissioner" shall be disregarded and the burden shall rest upon the plaintiff to disprove the grounds assigned and specified in the official action complained of. The court's decision shall consult only the rights of the plaintiff and the protection of the public and the "commissioner" shall prosecute no proceedings to obtain a reversal, modification or vacation of a judgment rendered in favor of the plaintiff and in such event, shall forthwith issue the license applied for. A judgment sustaining the refusal of the "commissioner" to grant or renew a license shall not bar, after thirty days, a new application by plaintiff for a license, nor shall a judgment in favor of the plaintiff prevent such "commissioner" from thereafter revoking such license for any proper cause which may thereafter accrue or be discovered.

See. 6373-9. Before such licensee shall dispose of any of such securities, within this state, he shall file with such "commissioner," in such form as shall be determined by him, the following information concerning such securities, if issued by any company:

(a) The name, location of principal office of the issuer and the names of its officers and directors, or if a co-partnership, the partners;

(b) A statement of the issuer, showing in general detail, the assets and liabilities, and capital stock of the issuer, as of a date as late as the close of its last fiscal year, and of its gross income, expenses and fixed charges, for one year last prior thereto, or for such time as the issuer has been in business, if less than one year;

(c) A pertinent description of such securities, and the purpose of said issue, and

(d) Unless the foregoing information be excused under the provisions of the following section, the approximate price at which the licensee purposes to dispose of such securities.

If the securities be of a taxing subdivision of any other state, territory, province or foreign government, and are not an obligation of the entire taxing subdivision and payable out of the proceeds of a general tax, there shall be filed the information required by paragraphs (c) and (d) of this section and, in addition thereto, a statement of the licensee, setting forth the nature of the obligation of such securities, how payment of the same is secured and that, to the best of his knowledge, there is no default in the payment of any part of the interest or principal of such securities and are no adjudications adversely affecting, or pending suits questioning the validity of the same.

See. 6373-10. The information required in the preceding section need not be filed:

(a) Unless required by the "commissioner," if the same has been filed by any other licensee; or

(b) If actual current sales of the securities, at prices quoted, shall have been, from time to time, for not less than six months next preceding such disposal, published in the regular market reports of the news columns of a daily newspaper of general circulation in this state; or

(c) Where there is a disposal of securities, the price paid or consideration rendered for which, in a single transaction, by one donee, shall amount to five thousand dollars or more; or

(d) Where the securities disposed of are those of manufacturing or transportation companies, or of common carriers or other public utilities, issued and outstanding in the hands of bona fide purchasers for value, prior to March 1, 1914, where such companies were, on said date, and shall be, at the time of sale, actual going concerns, either directly or through lessees, and where there shall be at the time of sale no default in payment

of any part of the interest or principal of such securities; or

(e) Where the information required, other than the approximate selling price, is contained in any standard manual of information, approved by such "commissioner"; or

(f) Where the disposal is made for a commission of less than one percentum of the par value thereof, by a licensee who is a member of a regularly organized and recognized stock exchange and who has an established and lawfully conducted place of business in this state, regularly open for public patronage as such.

See. 6373-11. Every dealer, before or at the time of circulating the same, shall furnish to the "commissioner" one copy of each prospectus, circular or other document of like nature and of each advertisement circulated by him in connection with the sale of any securities concerning which information is required to be filed under the provisions of Sections 6373-9 and 6373-10 of the General Code.

See. 6373-12. No person or company shall, for the purpose of organizing or promoting any insurance company, or of assisting in the flotation of its stock after organization, dispose or offer to dispose, within this state, of any such stock, unless the contract of subscription or disposal shall be in writing, and contain a provision substantially in the following language:

"No sum shall be used for commission, promotion and organization expenses on account of any share of stock in this company in excess of per cent. of the amount actually paid upon separate subscriptions, or, in lieu thereof there may be inserted, '\$ per share from every fully paid subscription,' and the remainder of such payments shall be invested as authorized by the law governing such company and held by the organizers (or trustees as the case may be) and the directors and officers of such company after organization, as bailees for the subscriber, to be used only in the conduct of the business of such company after having been licensed and authorized therefor by proper authority."

The amount of such commission, promotion and organization expenses shall in no case exceed fifteen per cent. of the amount actually received upon the subscription.

Funds and securities held by such organizers, trustees, directors or officers, as bailees, shall be deposited with a bank or trust company of this state or invested as provided in sections ninety-five hundred and eighteen and

ninety-five hundred and nineteen of the General Code until such company has been licensed as aforesaid.

Sec. 6373-13. Whoever, with intent to secure financial gain to himself, advises and procures any person to purchase any security and receive for such advice or services any commission or reward from the owner or salesman thereof, without disclosing to the purchaser the fact of his agency or his interest in such sale shall be liable to such purchaser for the amount of his damage thereby, upon tender of such security to, and suit brought against, such adviser, within one year subsequent to such purchase.

Sec. 6373-14. For the purpose of organizing or promoting any company, or assisting in the flotation of the securities of any company after organization, no issuer or underwriter of such securities and no person or company for or on behalf of such issuer or underwriter shall, within this state, dispose or attempt to dispose of any such security until such commissioner shall issue his certificate as provided in Section 6373-16 of the General Code, which shall not be done until, together with a filing fee of five dollars, there be filed with the commissioner the application of such issuer or underwriter for the certificate provided for in Section 6373-16, General Code, and, in addition to the other information hereinbefore required by paragraphs (a), (b), (c) and (d) of Section 6373-9 of the General Code, the following:

(a) A certified copy of the articles of incorporation or association of the issuer, its regulations and by-laws;

(b) Certified copies of all minutes of stockholders and directors relative to the issue of such securities;

(c) A sworn statement made by the president and secretary of the issuer, showing in detail the items of cash, property, services, patents, good will and any other consideration for which such securities have been or are to be issued in payment;

(d) Like certified copies of all contracts or agreements between the issuer and any underwriter of such securities, and, if disposed of by the issuer, all contracts and agreements relative to the sale and disposition thereof; and any such contracts or agreements made subsequent thereto shall be filed immediately upon the execution thereof;

(e) All contracts made between such underwriter and any salesman, agent or broker.

This section shall not apply where the issuance of the securities has been approved by the public service commission or like body of any state of the United States or any province of the Dominion of Canada, or where the

sale is made by or on behalf of an underwriter who, in good faith and not for the purpose of avoiding the provisions of this act, purchases the securities so afterward sold by him and pays therefor, in cash or its equivalent, before attempting to sell the same, not less than ninety percentum of the price at which such securities are thereafter sold by him; nor where the securities are those of a common carrier or of a company organized under the laws of this state and engaged principally in the business of manufacturing, transportation, coal mining or quarrying, and the whole or a part of the property upon which such securities are predicated is located within this state; nor of a real estate or building company all of whose property, upon which such securities are predicated, is located in this state; nor in the case of an issuer excepted under paragraph (f) of Section 6373-2, General Code; nor in cases where the filing of information is dispensed with under the provisions of paragraphs (b), (d), (e) or (f) of Section 6373-10, General Code.

The information required by paragraphs (d) and (e) of this section shall be for the information of the commissioner only, and shall not be disclosed by him except when lawfully required in a judicial proceeding.

See, 6373-15. No person or company, unless licensed in the manner and under the conditions applicable thereto hereinbefore provided for dealers, shall, within this state deal in real estate not located in Ohio of which he is not the actual and bona fide owner and unless the "commissioner" shall issue his certificate as provided in the following section, and prior to such issuance there shall, together with a filing fee of five dollars, be filed with the "commissioner" an application for such certificate, and a written statement of the applicant containing a pertinent description of the real estate the sale of all or a part of which is sought to be made, and the nature and source of the title of the owner thereto, and the amount or value and the nature of the consideration paid or allowed by him therefor, it shall, within this state, be unlawful:

(a) For any corporation, association or co-partnership doing business under any name other than the name or names of such person or of all the members of such association or co-partnership to sell any real estate not located in Ohio;

(b) For any person or company engaged in the business of dealing in real estate to sell or offer for sale any such real estate, the title to which is or is represented to the purchaser to be in the name of a corporation or unin-

corporated company, or of a person doing business under a fictitious name.

This section shall apply where the title to such property is held in the name of a trustee for any corporation or for any such described person or company; but it shall not be deemed to prohibit the disposal by an owner of his own property, in good faith and not for the purpose of avoiding the provisions of this act, where the transaction is not one of repeated transactions of a similar nature, performed as a part of the business of dealing in real estate; nor shall it be deemed to prohibit a railroad company having an immigration bureau or department from advertising either directly or through its accredited representatives, the fact that there are along its route lands for colonization or sale; provided that such advertising be not of specific tracts of real estate, and not for the purpose of avoiding the provisions of this act.

See. 6373-16. Said commissioner shall have power to make such examination of the issuer of the securities, or of the property named in the two next preceding sections, at any time, both before and after the issuance of the certificate hereinafter provided for, as he may deem advisable. When in the discretion of the commissioner all or any part of the expense of such examination should be paid by the applicant for such certificate, such applicant shall deposit with the commissioner such sum of money as the commissioner may order, out of which said sum the commissioner shall pay that portion of the expense of such examination as the commissioner determines said applicant should pay. The commissioner shall render to the applicant an itemized statement of the expenditure and a proper record thereof shall be kept. And if it shall appear that the law has been complied with and that the business of the applicant is not fraudulently conducted, and that the proposed disposal of such securities or other property is not on grossly unfair terms, and that the issuer or vendor is solvent, upon the payment of a fee of ten dollars, the commissioner shall issue his certificate to that effect, authorizing such disposal. But if it shall not affirmatively so appear he shall so notify the applicant, in writing, and of his refusal to issue such certificate. Such certificate shall be issued or refused within a reasonable time after the filing of the application therefor, which shall be within not more than 30 days from and after the applicant or certificate holder whose certificate has been revoked has fully complied with all requirement of this act precedent thereto; provided, that the commissioner may at any time revoke any such certificate issued by

him when he has reason to believe that the business of the holder thereof is being fraudulently conducted, or that such securities or other property are being disposed of upon grossly unfair terms, or, in the case of securities that the issuer thereof is insolvent. Such applicant shall have the same right of review of such finding as is given to a dealer by Section 6373-8. The fee provided for in this section shall not be required of an applicant who is licensed as a dealer.

See, 6373-17. Such certificate shall recite in bold type that the "commissioner" in no wise recommends such securities or other property; and no person or company shall advertise, in connection with the sale of such securities, the fact that such certificate has been issued unless such advertisement also contains in bold type a copy of such recital.

See, 6373-18. In addition to the liability now imposed by law, any person or company that, by written or printed circular, prospectus, statement or advertisement of any kind, shall offer for subscription or purchase any security, or receive the profits accruing from the disposal of securities so advertised, shall be liable to any person who, on the faith of such advertisement or document, acquires such security, for the loss or damage sustained by him by reason of any untrue statement contained therein, unless such person or company shall establish that he or it had no knowledge or notice of the publication of such advertisement prior to the transaction complained of, or had just and reasonable grounds to believe the statements thereof to be true. Wherever any corporation shall be so liable, the directors thereof shall also be, under like limitations, jointly and severally liable. Any such director, upon the payment of a judgment so obtained against him, shall be subrogated to the rights of the plaintiff against such corporation and shall have the right of contribution for the payment of such judgment, under like limitations, against any of his fellow directors. Lack of reasonable diligence to ascertain the fact of such publication or the falsity of any statement therein contained, shall be deemed to be knowledge of such publication and of the falsity of any untrue statement thereof. Any action brought against such director, based upon the liability hereby imposed, shall be brought within two years after the acquisition of the security by any person so damaged or after payment of the judgment for which contribution is sought.

See, 6373-19. If the issuer of such securities be a company incorporated, organized or formed to make any insurance named in subdivisions I and II, division III,

title IX of the General Code, the "commissioner," for all the purposes named in sections 14 and 16 of this act, shall be the superintendent of insurance of this state. In addition to the powers given to, and the duties prescribed to be performed by, such "commissioner," under said sections, the superintendent of insurance shall have, over any such company disposing or attempting to dispose of any of its securities within this state, the powers of regulation, supervision and examination conferred on him by law, with reference to companies licensed to transact the business of insurance within this state.

Sec. 6373-20. Whoever knowingly makes any false statement of fact in any statement or matter of information required by this act to be filed with the "commissioner," or in any advertisement, prospectus, letter, circular or other document, containing an offer to dispose or solicitation to purchase, or commendatory matter concerning such securities or real estate, with intent to aid in the disposal of the same, or whoever knowingly violates any of the provisions of sections 12, 14 or 15 of this act, or for the purpose of aiding in the disposal of any security or real estate, knowingly makes any false statement or representation concerning any license or certificate issued under the provisions hereof, shall be fined not less than one hundred dollars nor more than five thousand dollars, or imprisoned in the penitentiary not more than one year or both; and whoever violates any of the other provisions of this act shall be fined not less than fifty dollars nor more than one thousand dollars, or imprisoned in the county jail or workhouse not more than sixty days, or both.

Sec. 6373-21. In any prosecution brought under this act, the accused shall be deemed to have had knowledge of any matter of fact where in the exercise of reasonable diligence, he should, prior to the commission of the offense complained of, have secured such knowledge. Information and indictments under this act need not negative any of the exceptions enumerated in sections two, ten and fourteen hereof.

Sec. 6373-22. Nothing herein contained shall limit or diminish the liability of any person or company now imposed by law, or prevent the prosecution of any person or company violating any of the provisions of this act, for the violation of any other statute or of any other provision hereof.

Sec. 6373-23. Nothing herein contained shall be so construed as to impair the obligation of prior contracts.

Sec. 6373-24. The superintendent of banks, as "commissioner" under this act, is hereby authorized to appoint

an assistant commissioner and such clerks as are actually necessary to carry out the provisions of this act and to fix their salaries; such appointments and salaries to be subject to the approval of the governor. Subject to the supervision of such "commissioner," the assistant commissioner may perform all the duties imposed upon, and have all the powers granted to such "commissioner" under the provisions of this act. All fees received hereunder by the "commissioner" shall be deposited by him with the treasurer of state upon the warrant of the auditor of state.

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Motion for Temporary Restraining Order.—Filed November 17, 1915.

In the District Court of the United States for the Southern District of Ohio, Eastern Division.
The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of the State of Ohio, Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Harry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.
[No. 51.]

Motion for a Temporary Restraining Order.

Now comes the plaintiff herein, by his duly authorized attorneys, and moves the court for a temporary restraining order herein in accordance with the prayer of the bill of complaint.

E. N. Huggins,
T. S. Hogan,
Solicitors for Plaintiff.

Motion for Interlocutory Injunction.—Filed November 17, 1915.

In the District Court of the United States for the Southern District of Ohio, Eastern Division.
The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of the State of Ohio, Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Harry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.
[No. 51.]

Motion for Interlocutory Injunction.

Now comes the plaintiff herein, by his duly authorized attorneys, and moves the court for an interlocutory injunction herein in accordance with the prayer of the bill of complaint.

E. N. Huggins,
T. S. Hogan,
Solicitors for Plaintiff.

Opinion of Judge Sater Granting Restraining Order.—
Filed November 19, 1915.

United States District Court, Southern District of Ohio,
Eastern Division.

The Geiger-Jones Company, an Ohio Corporation,
Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of
Ohio, and Harry T. Hall, Superintendent of Banks
and Banking of Such State, Defendants.

[No. 51.]

On Application for Restraining Order.

Sater, District Judge:

The plaintiff applies for a restraining order against the defendants to prevent them from proceeding under the act of 1913 of the General Assembly of Ohio (O. L., Vol. 103, pp. 743-753), known as the "Blue Sky Law," and the act of January 14, 1914 (104 O. L., 110), to amend certain sections of the General Code to regulate the sales of bonds, stocks and other securities, and of real estate not located in Ohio, and to prevent frauds in such sales.

The plaintiff, an Ohio corporation, is engaged in buying and selling investment securities, principally stocks and bonds of industrial corporations. The bill avers that several hundred persons hold stock in the plaintiff company, that it has sold securities of more than twenty corporations to 11,000 different persons, and that it is engaged in interstate and foreign commerce, in that its business extends and has extended not only throughout the state of Ohio, but into other states. The bill must be construed as an entirety. Its third paragraph charges broadly that "the defendants and each of them pretending and assuming to act in virtue of the statutes aforesaid and without any right, authority or justification in law have threatened, and, unless restrained, will immediately revoke the license granted to plaintiff to do business as a dealer in the securities aforesaid, to the great and irreparable injury to this plaintiff and to the 11,000 holders of said securities as well as the companies concerned therein, representing investments in excess of \$50,000,000." Paragraph four avers that the attorney general, without authority or justification in law, threatens to give his co-defendant Hall and will give to him, unless restrained by the court, a written certificate or opinion or recommendation advising and directing him to revoke

the plaintiff's license to do business, and threatens to cause and will cause the same to remain a public document in the files of his co-defendant and to be published broadcast by the newspapers; that he has already advised Hall that it will be the latter's duty to observe such opinion, for the reason that Hall is without discretion in the premises; and that Hall, believing himself bound by such opinion and to be without the right to exercise his own discretion in the enforcement of such acts, will, in reliance thereon and compliance therewith, without warrant of law, revoke plaintiff's license, unless restrained from so doing. The sixth and seventh paragraphs charge that, if such opinion is given, and acted upon by Hall, and if the defendants, or either of them, give the above-mentioned publicity to their proceedings, irreparable injury will be done to the property rights of the plaintiff and the 11,000 security holders whose property will be depreciated in value without ability on the part of the plaintiff to prevent such injury save through the interposition of the court; that the plaintiff will be prevented from prosecuting its business free from the interference of such officials acting under such unconstitutional law, and will be deprived of the profits arising from the conduct of such business; and that its stockholders and security holders will be irreparably damaged. The two acts in question are said to be unconstitutional, invalid and void for six reasons, which are specifically enumerated in the bill. The prayer is that the attorney general be restrained from giving such opinion, that both defendants be restrained from publishing and filing the same and their proceedings in connection therewith, and from interfering with the plaintiff's continuation of its business. It will be seen from the foregoing that the broad averment made in the third paragraph is by subsequent specifications restricted to the charge on the part of the attorney general of a purpose as regards him to give an opinion to his co-defendant Hall, advising and directing Hall to cancel the plaintiff's license, which opinion will become one of the instruments on file in the banking department, and to cause it to be published broadcast in the newspapers. It is this contemplated action of the attorney general against which relief as to him is sought.

Section 341, G. C. Ohio, provides that the attorney general, when so requested, shall give legal advice to a state officer *** in all matters relating to his official duties. It is not averred that the attorney general has been requested by his co-defendant to give his opinion on the acts in ques-

tion, but, as an official is presumed to act within the law and to perform his duties as prescribed by the law, it must be presumed that he was called upon by Hall for an opinion. The superintendent of banks and banking is an appointive state officer. See. 718, G. C., recognizes him as an officer in that he is required to seal "with the seal of his office" every instrument executed by him in pursuance of the authority conferred upon him by law. He is also made such by the application of the definition of an "officer" adopted in *State vs. Wilson*, 29 Ohio St., 347. It is not charged and may not be presumed that the attorney general is about to give a dishonest opinion, or to act corruptly, maliciously, or for a fraudulent purpose, or from any sinister motive. If he is about to act under a valid law, the court may not inquire as to his motives. In *Mechem on Public Office and Officers*, Sec. 9990, it is said:

"In determining the cases in which a public officer may be restrained by injunction, it may first be noticed that the writ will not be granted to restrain a public officer from acting where he is proceeding by the authority and in pursuance of the law regulating his powers and duties, unless such law be unconstitutional or otherwise invalid. What a valid law authorizes the officer to do, the courts will not undertake to prevent, even though it be alleged that the officer is actuated by unworthy motives."

It is not charged that the attorney general is about to mandamus Hall to compel him to act under the enactment in question, or that he is about to enjoin the plaintiff from conducting its business, or to commence any criminal action or actions under such enactments, or to cause the same to be commenced, by any duly authorized prosecuting officer. Under the facts presented by the pleading, may this court enjoin him from performing the acts of which complaint is made?

The averments of fact contained in the bill must, for the purposes of this hearing, be treated as true. So treating them, the attorney general will advise Hall that the laws in question are valid and that for want of discretionary power to do otherwise he (Hall) must proceed to enforce them by revoking the plaintiff's license. The courts will not be bound to adopt any views expressed by the attorney general in his threatened opinion, *U. S. vs. Black*, 128 U. S., 40, 47, nor will Hall be required to follow his directions unless he chooses to do so, *Dodd vs. The State*, 18 Ind., 56, 67. This fact, however, may be put aside, for the reason that it is averred that Hall

will follow the attorney general's direction. The enforcement of the law by a revocation of the plaintiff's license, which is the only manner of enforcement of which complaint is made, is cast upon Hall by section 6 of the act of 1913, and by section 6373-6 of the act of 1914. If he should proceed under the advice and direction given him by the attorney general, the latter would not be further called upon to act—in any event, might not be called upon further to act or advise—unless the plaintiff, after the cancellation of its license, should appeal to the courts for relief, as it may do under section 8 of the act of 1914, or section 6373-8 of the act of 1914. Accepting the averments of the bill to be true, as must be done, the views of the attorney general as to the validity of the acts in question, as to the extent of Hall's powers and as to his obligations to cancel plaintiff's license, have already been made public. In order to plant its case in court, the plaintiff of necessity or by its own election promulgated such views. Whatever injury will result to it, its stockholders and security holders by reason of such promulgation has already been done, unless the averred intention of the attorney general to cause his views to be published broadcast throughout the state and country will increase such damage. The charge as to such purpose on his part may, however, be regarded as a negligible averment. The business of his office and that of Hall is public. Any newspaper is at liberty to inspect and publish any opinion emanating from the attorney general. Indeed, the opinions of that officer are published at the state's expense in bound volumes as a part of his annual report, for use and distribution. The subject-matter toward which his proposed opinion is to be directed and the great interest of the public, as well as of the plaintiff's investors and stockholders, are such as will necessarily largely attract public attention and induce widespread publication. It is surmised that the public press will voluntarily give such notice of the opinion, if filed, that any effort the attorney general may make to give increased publicity to his utterances will not, in all probabilities, bring them to any greatly increased number of our citizens.

The books abound in cases in which state officers, and among them attorney generals, have been enjoined from enforcing unconstitutional laws. The "Blue Sky Law" of West Virginia was held unconstitutional in *Bracey vs. Darst*, 218 Fed. Rep., 482, in a suit against the attorney general of that state and other state officers—the charge being that they were about to prosecute criminal proceedings against alleged offenders; that of Iowa met a

similar fate in Wm. R. Compton Co. vs. Allen, 216 Fed. Rep., 537, in which the attorney general was one of the defendants; that of Michigan was invalidated in Alabama & N. O. Transp. Co. vs. Doyle, 210 Fed. Rep., 173, in which the attorney general was by the act then under consideration constituted a member of the securities commission. In *Ex Parte Young*, 209 U. S., 123 (13 L. R. A. (N. S.), 932), in which a Minnesota rate act was held to be unconstitutional, it appears that the attorney general and certain other state officers were enjoined by the lower court from enforcing the act and that in disregard of such injunction the attorney general filed a suit in mandamus in one of the state courts to compel the observance of the law by an alleged violator. A rule to show cause why he should not be punished for contempt issued against him. The Supreme Court held that the rule to show cause had been rightfully issued. In *Louisville & N. R. Co. vs. Bosworth*, 209 Fed. Rep., 380, involving a Kentucky statute relating to an assessment of railway property for taxation, the attorney general and other state officers were held properly to be made defendants, and in *Little vs. Tanner*, attorney general of the state of Washington, 208 Fed. Rep., 605, it was held that the attorney general and the prosecuting attorney of a county were so far charged under the state statutes with the execution of the criminal laws as to make them proper parties defendant to a suit to enjoin the enforcement of a state statute whose violation was punishable as a criminal offense. Many other cases might be cited. The rule is well settled that a federal court may enjoin the attorney general of a state, whose general duty is to enforce the state statutes, from proceeding to enforce, against persons affected, a state statute which violates the federal constitution, such proceeding being not prohibited by the provision of the federal constitution, forbidding the maintenance of actions against a state. In the *Young* case it was said (p. 159):

"The act to be enforced is alleged to be unconstitutional, and if it be so, the use of the name of the state to enforce an unconstitutional act to the injury of complainant is a proceeding without the authority of and one which does not affect the state in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state officer in attempting by the use of the name of the state to enforce a legislative enactment which is void because unconstitutional. If the act which the state attorney general seeks to enforce be a violation of the federal constitution, the officer in proceeding

under such enactment comes into conflict with the superior authority of that constitution, and he is in that case stripped of his official and representative character and is subjected in his person to the consequences of his individual conduct. The state has no power to impart to him any immunity from a responsibility to the superior authority of the United States."

In the same case it was further said (pp. 155, 156):

"The various authorities we have referred to furnish ample justification for the assertion that individuals, who, as officers of the state, are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act violating the federal constitution, may be enjoined by a federal court of equity from such action."

The same case is also authority for the doctrine that a federal court, in which is first raised the question of the validity of a statute under the federal constitution, has a right to decide that question to the exclusion of the state courts, and may enjoin criminal proceedings subsequently commenced under such statute in the state court until its duty is performed. From this it follows that inasmuch as this court has acquired jurisdiction to determine the validity of the Ohio "Blue Sky Law," it will have the right to decide that question to the exclusion of the state courts, and that should a state officer, while this case is pending, attempt either civil or criminal proceedings in the state courts to enforce such law, he could, on a proper presentation, be enjoined. Attention has been called to the above announcements of the law by the highest court of the land on account of the bearing which they have on the question as to whether the attorney general shall be restrained in the present instance or not. It is said in *High on Injunctions*, Sec. 1329a, that "A federal court sitting in equity may enjoin officers of a state from proceeding to execute or from otherwise doing acts under an unconstitutional law of the state where the attempted enforcement of the invalid statute will result in irreparable injury to the plaintiff for which there is no adequate remedy at law." The attorney general's opinion will, under the averments of the bill, set the machinery of the "Blue Sky Law" into operation. His opinion, however, will be about such law and not under it. His opinion will be rendered not under the alleged un-

constitutional laws, or either of them, but under Section 341, G. C., which is clearly a valid enactment. He is about to act in the discharge of a statutory duty. His views as to the validity of the enactment in question may be erroneous, but it is not illegal for him to entertain such views. Action must be taken by Hall, if taken at all. If Hall should act and the plaintiff should resort to the state court to reverse such action, and the attorney general as Hall's counsel should then become a participant, or, if Hall should refuse to act and the attorney general should then endeavor to compel him to do so, or, if the attorney general by a civil or criminal proceeding should seek the enforcement of such laws, he may then undoubtedly be restrained by this court, should it believe the law to be unconstitutional. Inasmuch only as he will merely advise **about** the laws and will not act under them, but under Section 341, and, as it is sought to enjoin him from saying, if his opinion is filed, what everybody now knows, he will say and what the plaintiff has already (although of necessity) publicly divulged, and what cannot, as it seems to me, appreciably enhance the damage, if any, which has already been occasioned, I am constrained to hold that the situation does not now exist which calls for the restraining action of this court. Insofar as cases have come under my observation in my somewhat hurried investigation, the instances in which an attorney general was restrained are those in which his position was that of a principal actor and not of a mere adviser of others as to what their duties might be. Whether the attorney general may command or should merely advise Hall is not a question which need be decided now, if ever, by this court.

Whether Hall should be enjoined must be determined by the ruling in *Blount vs. Societe Anonyme Du Filtre*, 53 Fed. Rep., 98. In that case Judge Jackson said:

"The object and purpose of a preliminary injunction is to preserve the existing state of things until the rights of the parties can be fairly and fully investigated and determined upon strictly legal proofs, and according to the course and principles of courts of equity. The prerequisites to the allowance and issuance of such injunctions are that the party applying for the same must generally present a clear title, or one free from reasonable doubt, and set forth acts done or threatened by the defendant, which will seriously or irreparably injure his rights under such title, unless restrained. The legal discretion of the judge or court in acting upon applications for provisional injunctions is largely controlled

by the consideration that the injury to the moving party arising from a refusal of the writ, is certain and great, while the damage to the party complained of, by the issuance of the injunction, is slight or inconsiderable."

From the cases cited by him, the following is gleaned: It is not necessary that it should now be decided upon the merits that the enactments in question are unconstitutional and that the plaintiff must ultimately prevail. The court must see that the matters of which complaint is made are a proper subject of investigation, that there is a substantial and real question to be decided and that property rights are affected, but it is not necessary that it should satisfy itself to a certainty of the existence of such rights. It is sufficient if a fair question is raised as to their existence. The court will also consider whether interim interference on a balance of convenience or inconvenience to one party and to the other is or is not expedient. The Supreme Court in Georgia vs. Braiseford, 2 Dall., 402, said:

"In order to support a motion for an injunction, the bill should set forth a case of probable right, and a probable danger that the right would be defeated without the special interposition of the court."

The doctrine of the Blount case was approved and applied by the Circuit Court of Appeals in City of Grand Rapids vs. Warren Bros. Co., 196 Fed. Rep., 892. Tested by the foregoing, a restraining order may go against Hall, to prevent him from revoking or attempting to revoke the plaintiff's license and from taking any action in that behalf, and from enforcing or attempting to enforce any opinion which the attorney general may deliver to him concerning the plaintiff's operation under the acts in question, and from interfering in any wise with the plaintiff's continuation of its business. The restraining order will continue in force until the hearing and determination of the application for an interlocutory injunction, which hearing will be at Cincinnati on November 27, 1915, at 10 o'clock a. m.

Entry Granting Restraining Order. — Filed November 22, 1915.

In the District Court of the United States for the Southern District of Ohio, Eastern Division.
The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of the State of Ohio, Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Harry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.

[No. 51.]

Restraining Order.

This 19th day of November, A. D. 1915, came the plaintiff in the above entitled suit, by its attorneys, and presented to undersigned district judge of the United States Court for the Southern District of Ohio, Eastern Division, its bill of complaint duly verified, and made application to the said judge for an interlocutory injunction enjoining, inhibiting and restraining the said defendants from enforcing or attempting to enforce the acts of the General Assembly of the state of Ohio referred to and mentioned in the bill of complaint, on the ground that the same are unconstitutional, null and void, and at the same time moved the judge for a restraining order prohibiting, enjoining and restraining the said defendants from taking any further proceedings under and by virtue of said acts, or from doing the things complained of in said bill of complaint, and the judge being satisfied that this is a proper case for a temporary restraining order, doth adjudge, order and decree that no temporary restraining order issue against the defendant, Edward C. Turner, attorney general of Ohio, and that the defendant, Harry T. Hall, as superintendent of banks and banking of the state of Ohio, be restrained from attempting to enforce or enforcing the provisions of said acts, or from interfering with the business of the plaintiff, or from giving publicity to any of the things complained of in said bill of complaint, until a hearing upon such application for interlocutory injunction can be arranged and had before three judges, as provided for in Section 266 of the Judicial Code of the United States; the restraining order herein will continue in force until the hearing and determination of the application for an interlocutory injunction, which hearing will be at Cincinnati on November 27, 1915, at 9:30 o'clock a. m.

It is further ordered that the plaintiff serve upon the defendant above named a copy of the bill of complaint, and that the clerk of this court cause to be delivered to the said defendant a copy of this restraining order.

J. E. Sater,
District Judge.

Entry Submitting Case.—Filed November 27, 1915.

The Geiger Jones Company

vs.

Edward C. Turner, Attorney General of the State of
Ohio, et al.
[No. 51.]

This day this cause came on for hearing to the court upon the pleadings, and was argued by counsel for the parties, Messrs. M. B. Turner and T. S. Hogan for the complainants, and E. C. Turner, attorney general, for the defendants, and was submitted to the court, whereupon the court took said cause under advisement and same is continued until the further order of the court in the premises.

Memorandum Opinion.—Filed February 10, 1916.

The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of the State of Ohio, Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Henry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.

[No. 51.]

Don C. Coultrap, Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Henry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.

[No. 52.]

William R. Rose and The RiRichard Auto Manufacturing Company, a Corporation Organized Under the Laws of the State of West Virginia, Plaintiffs,

vs.

Henry T. Hall, Superintendent of Banks and Banking of the State of Ohio; Cyrus Locher, Prosecuting Attorney of Cuyahoga County Ohio, and William T. Smith, Sheriff of Cuyahoga County, Ohio, Defendants.

[No. 53.]

On Application for Temporary Injunction.

Before Warrington, Circuit Judge, and Sater and Hollister, District Judges.

Sater, District Judge:

The constitutionality of the so-called "blue sky" law of Ohio (Sees. 6373-1 to 6373-24, General Code, 103 Ohio L. pp. 743-753, 104 Ohio L. pp. 110-119, 105-106 Ohio L., pp. 363-364) is assailed in each of the above mentioned cases, which, for convenience, are considered together. Statutes of a kindred character have in learned opinions been declared invalid by federal courts sitting in Michigan (Alabama & N. O. Transp. Co. v. Doyle, 210 Fed. Rep. 173, Halsey & Co. v. Merriek, not yet reported), Iowa (Compton v. Allen, 216 Fed. Rep. 537), West Virginia (Bracey v. Darst, 218 Fed. Rep. 482), and South Dakota (Sioux Falls Stockyards Co. v. Caldwell). The last named case, which is unreported, was decided by Sanborn, Circuit Judge, and Munger and Elliott, District Judges. Although a consideration of the act will involve a reiteration of principles already ably and convincingly stated, it is thought advisable to review it in part, at least,—a task rendered difficult on account of the

numerous exceptions to its general provisions, and, in some instances, of exceptions to such exceptions.

The Geiger-Jones Company, an Ohio corporation, is engaged in buying and selling in Ohio and other states, stocks and bonds principally of industrial corporations, domestic and foreign. It seems to prevent the revocation of the license heretofore granted it to transact such business and the threatened enforcement of the law against its continued prosecution of the same. Coultrap, a citizen of the state of Pennsylvania, and an agent of the Geiger-Jones Company, is the owner and holder of and a dealer in stocks of certain Ohio corporations and conducts his business in part by mail and in part by personal visits to the state. He charges that the revocation of the license of his employer will operate as a cancellation of his authority and that the contemplated enforcement of the statute will interrupt and destroy his business. Rose was heretofore arrested, indicted and convicted in one of the state courts for violating the act by selling the stocks and bonds of industrial concerns, and, particularly, the stock of his co-plaintiff, a West Virginia corporation, and is now awaiting sentence. Both he and The Richard Auto Manufacturing Company allege that the enforcement of the statute by the defendants named in their bill will prevent Rose from prosecuting his business of selling securities and his co-plaintiff from completing its organization and capitalization for the manufacture of automobiles. Briefly stated, the validity of the act is assailed on the grounds that (1) it is violative of the commerce clause of the federal constitution; (2) it is constitutionally obnoxious in that it denies plaintiffs of property without due process of law and the equal protection of the laws; (3) it delegates legislative and judicial power to an executive officer, in violation of the state constitution; and (4) it is a law of a general nature but does not operate uniformly throughout the state, as required by Section 26, Article 2, of the state constitution. If the act be unconstitutional, each of the plaintiffs is, as he must be, within the class whose constitutional rights are invaded. *Standard Stock Food Co. v. Wright*, 224 U. S. 540, 550. The prayer of each bill is for general as well as specific relief.

The act, which is entitled, "An act to regulate the sale of bonds, stocks, and other securities, and of real estate not located in Ohio, and to prevent fraud in such sales," prohibits, under severe penalties, the disposition of all securities subject to its provisions, without discrimination as to and regardless of their value, unless authority so to do is first obtained from the superintendent of banks

(termed the commissioner). The term "dispose of" is broadly construed to mean, "sell, barter, pledge, or assign for a valuable consideration or obtain subscriptions for." The first section, 6373-1, in comprehensive language declares that, except as otherwise provided in the act, no dealer may within the state dispose of or offer to dispose of any stocks, stock certificates, bonds, debentures, collateral trust certificates or other similar instruments (all termed "securities") evidencing title to or interest in property issued or executed by any private or quasi-public corporation, copartnership or association (except corporations not for profit), or by any taxing subdivision of any other state, territory, province or foreign government, without being first licensed so to do. Promissory notes are not within the terms of the act, as was the case in the original Michigan statute. A limited number of other securities are also excluded from its provisions. The inclusive character of the act extends not only to "securities" coming within its provisions, but also to the persons subject to its exactions, prohibitions and penalties, as is evidenced by its definition of the terms "dealer" and "company," the former embracing "any person or company" and the latter "any corporation, copartnership or association, incorporated or unincorporated, whenever and wherever organized." The term "dealer" does not, however, include national banks or any company engaged in the marketing or flotation of its own securities or any stock-promoting scheme, although such company and scheme are required to obtain the certificate of the commissioner mentioned, and must abide by all the provisions contained, in Sections 6373-14 and 6373-16. A restricted number of other persons, natural and artificial, having occasion to dispose of securities, are also excluded from the classification of dealers. An "issuer" is defined to be an original issuer.

The act must be sustained unless it can be clearly shown to be in conflict with some constitutional provision. The question as to its wisdom was for the determination of the legislature; with that the court is not concerned. If the power under the federal constitution to enact it is absent, it is unimportant how wise, necessary or beneficent it may be, for it is then necessarily void because in conflict with the organic law of the land. *Rail & River Coal Co. v. Yaple*, 214 Fed. Rep. 273, 279, 280; *Alabama & N. O. Transp. Co. v. Doyle*, 176; *Bracey v. Darst*, 491, 492; *Board of Health v. Greenville*, 86 Ohio St., 1, 20; *State v. Toledo*, 48 Ohio St., 112, 132, 133.

If there are separate and independent unconstitutional provisions in the statute, which may be rejected,

and the rest of the act be permitted to stand and have effect according to the legislative intent, the valid portions must be upheld. But if an unconstitutional element pervades the entire statute as an inherent and essential part, it must fail as an entirety. In such a case it does not avail that the officer charged with the execution of the law may not enforce it according to its terms, but only as he may deem wise and expedient. Assent cannot be given, under such circumstances, to the proposition that although a statute may authorize the accomplishing of an unconstitutional purpose, it must, nevertheless, be presumed that it will, in fact, only be used to accomplish what can be done in accordance with the constitution. *Taylor v. Com'rs.*, 23 Ohio St. 22, 33, 34; *Alabama & N. O. Transp. Co. v. Doyle*, 181; *Bracey v. Darst*, 491, 492; *People v. Warden*, 144 N. Y. 529, 539.

Because a certificate of stock is only evidence of the ownership of shares, the interest represented by them being held by the company for the benefit of the true owner (*Citizens Sav. & Tr. Co. v. Ill. Cent. R. R.*, 205 U. S. 46, 57; *Bank v. Mfg. Co.*, 67 Ohio St. 306, 314), it does not follow, as defendants' counsel contend, that such certificate is of less value than an unprinted sheet of paper of corresponding size and quality, and that it cannot therefore be a subject of interstate commerce. If it be but written evidence of an interest in corporate property, the same may be said of notes and bills, which are mere evidence of indebtedness on the part of individuals or corporations that issue them. In *Merritt v. American Steel-Bars Co.*, 79 Fed. Rep. 228, 235, C. C. A. 8, in speaking of stock certificates, it was said that:

"In the business world such obligations or securities are treated as something more than mere muniments of title. They are daily bought and sold like ordinary chattels, they may be hypothecated or pledged, they have an inherent market value, and, while differing in some respects from chattels, they are generally classified as personal property."

In Ohio a stock certificate is so far property that it may be seized by an officer making an attachment or levy. Sec. 8673-13, G. C.

A state law which, in its essentials, is a legitimate exercise of the police power, is not rendered invalid by reason of the fact that interstate commerce is thereby incidentally affected; but, if such law directly burdens such commerce, although expressed to be a regulation under the state police powers, it must be held to be unconstitutional, for the reason that the power to regulate commerce between the states is vested in Congress.

Arnold v. Yanders, 56 Ohio St. 417, 421; Re Oscar Julius, 4 Ohio C. C. (N. S.), 604, 609; Mugler v. Kansas, 123 U. S. 623, 661; Austin v. Tennessee, 179 U. S. 343, 344.

Utterances emanating from the Supreme Court and express rulings by lower federal courts establish beyond all reasonable controversy that stock and bonds, securities whose disposition is subject to the provisions of the act, are articles of legitimate interstate commerce. Bracey v. Darst, 495, 496; Compton v. Allen, 546. Sales of them as between the states and their transmission from one state to another, whether through the mails or the instrumentality of common carriers, constitute interstate commerce. Sales may be and are effected by telegraph, telephone, correspondence, traveling salesmen and the issuers or investment companies directly or through their local or branch houses. The securities may be delivered by such salesmen or branch houses at the times sales are made or subscriptions taken, or by the issuers or investment companies by means of any of the known and usual agencies for transmitting such instruments from one state to another.

Whether interstate transactions in the securities whose disposition is within the purview of the act directly burdens interstate commerce must be determined by testing its provisions by the federal constitution. The act (See. 6373-3) requires as a condition precedent to the authorization and right of an applicant to do business in the state that such applicant shall submit, with a filing fee of five dollars, to the commissioner, (a) the names and addresses of the applicant's directors and officers, if the applicant be a corporation or association, and of all partners, if it be a partnership, and of the individual, if it be such, and also the names and addresses of all agents of such applicant, assisting or about to assist in the disposition of securities; (b) the location of its principal office without and within the state, if it have both; and (c) the general plan and character of its business, and references as to its suitability to transact such business, which references the commissioner "shall confirm by such investigation as he may deem necessary, establishing the good repute in business of such applicant's directors, officers and agents." If the applicant be a foreign corporation, having its principal place of business beyond the boundaries of the state, it must also file a duly certified copy of its articles of incorporation, regulations and by-laws, and, if it be an unincorporated association, a certified copy of its articles of association or deed of settlement. Every applicant must also submit to the commissioner an irrevocable written consent to litigate in the

courts of Franklin county only any action brought against him on account of any fraudulent disposal of securities by him or his agents, and also to be bound by service of process made personally or by registered mail. Notice of all applications for registration as a licensed dealer in securities must be published at the expense of the applicant in a daily newspaper of general circulation, and a further payment of an annual fee of fifty dollars is exacted should a license be issued. An amended license is necessary whenever the name of an agent is added to or stricken from the original, a payment of five dollars being exacted in the first instance and of two dollars in the latter. Notice of each amendment to the license must be published at the licensee's expense. The commissioner may at any time revoke any license or refuse to renew the same upon ascertaining—the manner of which is not stated—that the licensee is of bad business repute, has violated any provision of the act, or has engaged, or is about to engage, under favor of such license, in illegitimate business or fraudulent transactions. He is required to give at least five days' notice of his intention to revoke or to refuse to renew or grant a license, but the licensee or applicant, as the case may be, is not accorded a hearing. Following the refusal or revocation of a license, the applicant or licensee, as the case may be, may contest in the Franklin county court the correctness of the commissioner's ruling, but must assume the burden of disproving the grounds assigned as the basis of his official action, and must also meet any additional reasons which the commissioner may plead in justification.

Notwithstanding the granting of a license to an applicant, it may not dispose of any given securities until it has also filed, unless excused by the commissioner from so doing, a further statement (See, 6373-9) touching the issuer of such securities, if the issuer be a company, setting forth (a) its name and the location of its principal office and the names of its officers and directors, or, if it be a co-partnership, the names of the partners; (b) a general detailed showing of its assets, liabilities, and capital stock, as of a date not later than the close of the last fiscal year, and also of its gross income, expenses and fixed charges for the year last prior thereto, or for such other time as the issuer has been in business, if that time be longer than a year; (c) a pertinent description of such securities and the purpose of their issue; and (d) the approximate price at which the licensee proposes to dispose of them. The exemptions from the filing of the information called for by such section which the statute

permits the commissioner to grant are enumerated in Sec. 6373-10. In most instance they are so qualified as to relieve but a limited number of licensees and introduce a fatal inequality as regards the protection of the laws guaranteed by the fourteenth amendment.

The statute further provides that no issuer or underwriter, nor any person or company acting in behalf of either (Sec. 6373-14), shall, within the state, for the purpose of organizing or promoting any company or of assisting in the flotation of its securities, dispose or attempt to dispose of any such securities until the commissioner has issued a certificate permitting such to be done, the granting of which must be subsequent to the issuer or underwriter filing an application (except in certain instances which need not now be noted), with a fee of five dollars, containing the information required by paragraphs (a), (b), (c) and (d) of Sec. 6373-9, a certified copy of the issuer's articles of incorporation or association, regulations and by-laws, of all minutes of stockholders and directors relative to the issuance of such securities, of any contracts which have been made between the issuer and its underwriter of such securities (copies of all such subsequent contracts also to be filed when made), and of all contracts between any underwriter and any sales agent or broker, and also a sworn statement made by the president and secretary of the issuer showing in detail the items of cash, property, services, patents, good will, and any other consideration for which such securities have been or are to be issued in payment. The commissioner (Sec. 6373-16) may, as he deems advisable, examine the issuer of such last named securities at any time, both before and after his grant of the certificate named in Sec. 6373-14. In the exercise of his discretion, he may require all or any part of the expense of such examination to be borne by the applicant, who is compelled to deposit with him in advance for such purpose whatever sum he may order. The applicant receives an itemized statement of expenditures made, but this follows the conclusion of the examination. If the commissioner finds that the applicant has complied with the law, is not fraudulently conducting its business, is not proposing to dispose of its securities on grossly unfair terms and is solvent, a certificate authorizing the disposal of such securities shall issue, providing, except in case of a licensed dealer, a fee of ten dollars be paid, but, if the commissioner does not affirmatively so find, the certificate must be refused. It must be issued or denied within a reasonable time after application for it is made, which time shall be within thirty days after the

applicant or certificate holder, whose certificate has been revoked, has fully complied with all the requirements of the act, but as the commissioner is the sole judge of what constitutes compliance, and as the examination, especially of large concerns, would in some instances be prolonged and at times have to be conducted at distant points in this or another country, the issuing of a certificate may be delayed indefinitely and beyond the thirty day period. After the applicant is authorized to proceed with its proposed business, the commissioner may still revoke its certificate and deny it the privilege of continuing to dispose of the securities in question, if he has reason to believe that the certificate holder's business is fraudulently conducted, or that the securities are disposed of upon grossly unfair terms, or that the issuer is insolvent, the right to review his action being again restricted to the Franklin county court. Whether such "reason to believe" shall be the result of an orderly examination of the issuer's conduct and affairs, or be otherwise acquired, does not appear.

Violation of the act constitutes a misdemeanor or felony, regard being had to the character of the offense, and is visited by a fine or imprisonment, or both.

In *International Text Book Co. v. Pigg*, 217 U. S. 91, and *Buek Stove Co. v. Vickers*, 226 U. S. 205, 213-216, a Kansas statute, akin to the Ohio act, but less drastic, was held to impose a direct burden on legitimate interstate commerce and to be violative of the commerce clause of the federal constitution not only on account of the license required as a condition precedent to the right to transact a lawful business, but because it is not competent for a state legislature to prescribe, as a condition of the right of a foreign corporation to engage in legitimate interstate transactions, that it should prepare a statement as required, as to its stock, authorized and paid up, and its par and market value, as to its assets, liabilities, officers, trustees, directors, manager, and stockholders, with a showing of the stockholdings of each of the latter and the amount paid on his holdings, and the post-office address of all of such above named persons. A quite similar but (as regards the parties at whom it was aimed) a more comprehensive statute in that it ran not only against express or transportation companies incorporated by any foreign government, but, like the present act, also against any association or partnership acting under the laws of any foreign government, was likewise denounced in *Crutcher v. Kentucky*, 141 U. S. 47, in a well reasoned opinion which is freely quoted in the *Pigg* case. The draughtsman of the act here in question, un-

wittingly, no doubt, but with strange fatality, incorporated into it substantially all of the vices of the statutes considered in the above named cases, and added others equally, if not more, obnoxious. The burdens which it imposes on interstate commerce are so direct, positive and substantial as to lend peculiar force to the rule announced in the Pigg, Vickers and Crutcher cases and to vitiate the entire act for the reason that its constitutionally offensive features are so distributed through its various parts as to be inseparable. The enforced suspension from all business activity for a period of thirty days, imposed by the original Michigan act, was held to be a fatal "30-day paralysis." In the later decision rendered by the same court (*Halsey & Co. v. Merrick*) the subsequent act of that state was overthrown, notwithstanding the absence of such restrictive provision. In the present act the prohibition from the transaction of business must extend for a week, and possibly twenty or thirty days, or more; it therefore offends against the constitution quite as much as the first of the Michigan acts.

The act must be further tested by its effect upon the citizen's right to pursue a lawful calling. The natural right to life, liberty and the pursuit of happiness is not an absolute right. It must yield whenever the concession is demanded by the public welfare, health or prosperity. But, however viewed, the act transcends the legitimate exercise of the police power and violates the due process clause of the constitution. There is a fundamental distinction between what Mr. Justice Bradley termed, in *Butchers Union Co. v. Crescent City Co.*, 111 U. S. 746, 763, the ordinary occupations and pursuits of life, forming the large mass of industrial avocations which are and ought to be free and open to all, subject only to such general regulations, applying equally to all, as the general good may demand, and the kinds of business and transactions which are affected by a public interest or arise from public grant or exist by public sufferance. Of this latter class are the liquor traffic, grain elevators, innkeepers, warehouses, itinerant peddlers, insurance, motion picture shows, concerns exercising public franchises, and the like, all of which it is competent for the state law-making power to regulate and within proper bounds subject to executive license and control, as the interests of society may require. To the former class, with which alone we are now dealing, belongs the right in good faith to buy and sell securities and to fix their price by agreement, either in individual transactions or in the course of repeated and successive transactions of a similar char-

acter, a right which, when so exercised, is both property and liberty and which cannot be made subject to either executive grant or denial. *City of Cleveland v. Construction Co.*, 67 Ohio St. 197, 219. In *Allgeyer v. Louisiana*, 165 U. S. 578, 589, it was said that the liberty mentioned in the fourteenth amendment embraces "the right of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned." If an issuer or owner of or dealer in securities issued in good faith and based on value fairly commensurate with their face or selling value, is deprived of the right of disposal or of offering them for disposal, he is deprived not only of his property, within the meaning of the constitution, by taking from him one of the incidents of ownership (*City of Chicago v. Netheer*, 183 Ill. 104, 110), but also of his liberty, as appears from Mr. Justice Matthews' saying in *Yickwo v. Hopkins*, 118 U. S. 356, 370, that:

"The very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

Legitimate commercial transactions, such as the disposal of securities of the kind above mentioned, cannot be regulated by legislative enactment. The act in question seeks to regulate private transactions, but the person, natural or artificial, that sells securities based upon reasonable value, is entitled to the protection of the same safeguards as the man who sells clothing, dry goods, groceries, or hardware, or engages in any other private business that is not affected by a public interest. As was fittingly said in the *Doyle* case (p. 179):

"The issuing of * * * stocks or bonds by a private company to get money for its own business, no one can suppose is a public or quasi-public enterprise; the business of buying and selling stocks and bonds or other securities is no more 'affected by a public interest' than is the business of buying and selling groceries. When we thus recall that the prohibition applies to a private business, the question at once presents itself whether frauds and opportunities for fraud sufficiently characterize the business to jus-

tify its entire prohibition save under drastic restraints."

Every proposed offering of securities must first be submitted to the commissioner subject to the delay incident to his investigation or examination, which, should he temporarily grant a license or a certificate, may thereafter be continued and repeated, and, in case of an issuer mentioned in Sec. 6373-16, at its expense, limited only by his unrestrained discretion. Every investigation and examination authorized is **ex parte**. The applicant, whether a dealer or issuer, is not permitted to be heard as to the granting or revocation of a license or the award of a certificate, on the important questions of his own good repute, his alleged or surmised violations of the provisions of the statute, the legitimacy of his business, the honesty of his conduct, the fairness of the terms under which his disposals are made, or his own solvency. No rules of procedure are prescribed in accordance with which the investigation or examination shall be made, nor is the commissioner required to establish any rule or regulation as to what shall constitute good repute, solvency, or fraudulent conduct. He may at will deal with each case as it arises and vary his course to suit his pleasure. He is at liberty to hear, if he chooses, only evidence unfavorable to the investigated party. None of it need be safeguarded by an oath. The uncontrolled discretion, and even the whim and caprice (if he gives them play) of the commissioner or of his assistant (subject to the commissioner's supervision) may not only halt, but injure and perhaps destroy a worthy business enterprise and cast a cloud on the name of the applicant or licensee, and when such applicant or licensee seeks redress in the courts he must assume the burden of disproving the findings made against him, however groundless they may be. Even an effort is in effect made to deny him access to the federal courts. *Butler Bros. Shoe Co. v. U. S. Rubber Co.*, 156 Fed. Rep., 1, C. C. A. 8. In given respects the above named law is more severe than that of any of the states whose "blue sky" laws have been held unconstitutional. They afforded some opportunity, at least, to the applicant to be heard when his right to do business was under investigation, and, when his business and good name were assailed, opened to him the doors of all the courts of the state for redress against adverse rulings and limited the burden of cost to which he might be subjected in consequence of an examination into his affairs.

A police regulation, like any other law, is subject to the equal protection clause of the fourteenth amendment. *Atchison & Santa Fe Ry. Co. v. Vosburg*, 238 U. S. 56,

59. A statute does not deny the equal protection of the law if all persons brought under its influence are treated alike under the same conditions (Missouri Pac. Ry. Co. v. Mackey, 127 U. S. 205, 209) and if it does not subject the individual to an arbitrary exercise of the powers of government (Duncan v. Missouri, 152 U. S. 377, 382). The following illustrates wherein the act fails to meet the test thus prescribed: If more than fifty per cent. of the bonds of a given issue by a corporation are included in a sale to one purchaser, such issue is not embraced within the act (See. 6373-2) (1). The residue of the bonds, whether worthless or of value, may be sold without the supervision which the law provides. Another corporation of similar or precisely the same character, having no single purchaser for a majority of its bonds, is subjected to the onerous provisions of the law, although its securities may be of the highest financial character. An owner who is not the issuer of the securities he holds is at liberty to dispose of his holdings for his own account regardless of the statute, providing he can do so without resorting to repeated and successive transactions of a similar character; but, if such transactions are expedient or necessary, he may not sell, unless, at inconvenience and financial cost and through delay and the commissioner's approving stamp of "good repute in business," he obtains a dealer's license so to do. A natural person who has not underwritten and is a **bona fide** owner of his securities, whether he be of good repute or not in business, may dispose of them for his own account, but the underwriter, although he may possess the same moral qualities and wealth as the natural person, or outrank him in both of these respects, may not dispose of his holdings, except by compliance with the none too clear provisions of the act. Although a natural person may dispose of his holdings as above indicated, a partnership or association may not do so. The exemptions based on market reports of a daily newspaper of general circulation (See. 6373-10) (b) and (e), would fail to embrace large numbers of meritorious issuers of the different classes of securities, for it is well known that many securities are not listed on the market or mentioned in any standard manual of information. Sec. 6373-10 (e) can have no application to an issuer, if some donee is found who in a single transaction acquires securities of a given issue to the amount of five thousand dollars or more. There are many worthy concerns, each capitalized for a considerable sum, in which no one's investment reaches that amount. There would moreover seem to be no reason why, if some one person

who, risking that sum, should be defrauded, others should be cheated of smaller sums by sales of stock without the supervision which the law is intended to provide. A licensee may be relieved from giving information concerning the issuer of securities (Sec. 6373-10) (f), if the disposal of such securities is at a commission of less than one per cent. of their par value through a licensed member of a regularly organized and recognized stock exchange, having an established and lawfully conducted place of business in the state regularly open for public patronage, of all of which the commissioner is the sole judge. He may not be thus relieved, if the disposal is made by any one else.

The above observations upon the act have been made with full appreciation of Sec. 2, Art. XIII, of the Ohio constitution as amended September 3, 1912, the pertinent portion of which provides:

“Corporations may be classified and there may be conferred upon proper boards, commissioners or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stocks and securities, and over the business and sale of the stocks and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law.”

It is to be regretted that the Supreme Court of Ohio has not been called upon either to construe this provision or to pass upon the statute now under consideration nor have we had the benefit of the discussion of this constitutional provision by counsel. We are, however, impressed with the belief that the provision cannot be so construed as to change the conclusions we have reached concerning the operation and effect of the statute. The effect of the constitutional provision, in our judgment, is simply to give distinct expression to powers which were plainly implied under the same section and article of the constitution of 1851, which provided that:

“Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed.”

It is settled by *Berea College v. Kentucky*, 211 U. S. 45, 57, that:

“A power reserved to the legislature to alter, amend or repeal a charter authorizes it to make any alteration or amendment of a character granted subject to it, which will not defeat or substantially impair the object of the grant, or any rights vested under it, and which the legislature may deem necessary to secure either that object or any public right.

Commissioners on Inland Fisheries v. Holyoke Water Power Co., 104 Mass., 446, 451; Holyoke Co. v. Lyman, 15 Wall. 500, 522; Close v. Glenwood Cemetery, 107 U. S. 466, 476."

It was there further held that while the language of a statute may not in terms amend a charter, yet, where such appears to have been the legislative intent, the statute will be regarded as an amendment, Mr. Justice Brewer saying (p. 57):

"It would be resting too much on mere form to hold that a statute which in effect works a change in the terms of the charter is not to be considered as an amendment, because not so designated."

It is also settled that where such power to alter or repeal a charter is reserved, it is competent for the legislature to repeal the charter as well as to amend it. Greenwood v. Freight Co., 105 U. S. 13; Hamilton Gas Light & Coke Co. v. Hamilton City, 146 U. S. 258, 269, 270, 271; Shields v. State, 26 Ohio St. 86, 93, 94, aff'd, 95 U. S. 316, 324; State v. City of Hamilton, 47 Ohio St. 52, 73, 74. The most, then, that can be said of the statute in question is that its provisions operate to amend the articles of incorporation, the charters, of all domestic corporations that are in terms affected by the provisions of the act. It inevitably follows that these reserved powers include the power to supervise and regulate corporations. The consideration then of the present statute cannot be aided upon any theory that Sec. 2, Art. XIII, as amended, vests in the state legislature any greater power than it possessed under the old section and article; for manifestly there can be no difference between an express power and an implied power to do the same thing. It results that the constitutional validity of the present statute is to be tested by considerations practically the same as it would have been prior to the amendment in question. For example, a state is without power either through constitutional or statutory provision to avoid the effect and force of the commerce clause of the Federal Constitution; it hardly need be said that the statutory provisions before pointed out which directly impose burdens upon interstate commerce are of necessity violative of that clause; and, apart from everything else, it cannot be presumed that the legislature would have enacted the statute if it had understood that the provisions aimed against foreign corporations could not be sustained, since this alone would work an obvious discrimination against domestic corporations. Again, the power to supervise and regulate the business here involved was never before and cannot now be understood

to signify authority so to burden the business of domestic corporations as in practical effect to destroy it, regardless of its actual character and merit. We are not to be understood by anything said in this opinion to intimate that it is not within the power of the state legislature reasonably to regulate the business of corporations of its own creation or that of foreign corporations and joint stock companies which are operating within the borders of the state (Alabama & N. O. Transp. Co. v. Doyle, 186-187; Bracey v. Darst, 494, 495), such power of regulation being more extensive as to such artificial entities than as to individuals, copartnerships and voluntary associations. We do mean, however, to say, as we have already in effect stated, that the things attempted to be done by the present statute cannot be sanctioned under the guise of "supervisory and regulatory" measures in respect of the business of issuing and selling stocks and securities, whether of domestic or foreign corporations.

Other features of the act and other points argued have been considered; the treatment of the one and the discussion of the other would prolong this lengthy opinion and are not necessary.

The licenses mentioned in the first two of the above entitled causes expired on December 31, 1915. No occasion, therefore, exists, for enjoining their cancellation. The bill in each of them is drawn on narrow lines. The prayer of each, however, taken in conjunction with certain averments, is such as to warrant the temporary enjoining of the defendants therein named against enforcing or attempting to enforce the statute in question. In the third of the above cases, the motion filed by the defendants to dismiss is overruled. A temporary injunction is awarded in each case.

Order Granting Interlocutory Injunction.—Entered February 28, 1916.

In the District Court of the United States for the Southern District of Ohio, Eastern Division.

The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of the State of Ohio, Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Harry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.

[No. 51.]

Interlocutory Injunction.

This day the above entitled cause came on for hearing before the Honorable John W. Warrington, United States

circuit judge, The Honorable John E. Sater, United States district judge, and the Honorable Howard C. Hollister, United States district judge, upon the application of the above-named complainant for an interlocutory injunction in accordance with the prayer of its complaint and was argued by counsel for said complainant and said defendants, and was submitted to the court for determination. After consideration of the things alleged in the complaint and the arguments of counsel, in the opinion of the court, all of the three judges above named concurring, the act entitled,

“An act to regulate the sale of bonds, stocks and other securities and of real estate not located in Ohio, and to prevent fraud in such sale,”

contained in Volume 103 of the Ohio Laws, at pages 743-753, and the acts amendatory thereof, being the acts set forth in the bill of complaint filed herein, are violative of the constitution of the United States, particularly of the interstate commerce clause and the clause prohibiting the deprivation of liberty and the taking of property without due process of law, and securing the equal protection of the law.

It is hereby ordered that the said defendant, Harry T. Hall, superintendent of banks and banking of the state of Ohio, and all his employes and subordinates and each of them individually be and they are hereby enjoined from attempting to enforce and enforcing the provisions of said acts and the acts amendatory thereto of the Ohio legislature, and from interfering in any way with the business of the plaintiff, and from exercising further activities against the plaintiff in relation to the conduct of its business and from in any wise doing anything by virtue of or under favor of said acts prejudicial to the plaintiff, to all of which defendants except.

This injunction shall continue until the final decision of this case or the further order of the court.

Leave is given defendant to answer within five days.

Petition for Appeal.—Filed March 4, 1916.

In the District Court of the United States for the Southern District of Ohio, Eastern Division,
The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of Ohio, Plaintiff,
vs.

Edward C. Turner, Attorney General of the State of Ohio, and Harry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.

[No. 51.]

Petition for Allowance of Appeal to the Supreme Court.

The above-named defendant, Harry T. Hall, superintendent of banks and banking of Ohio, conceiving himself aggrieved by the decree made and entered on the 28th day of February, 1916, in the above entitled action, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record of proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

This 4th day of March, 1916.

Harry T. Hall,
Superintendent of Banks of Ohio.

By Edward C. Turner,
Attorney General of Ohio.

Henry S. Ballard,
First Assistant Attorney General.

Clarence D. Laylin,
Solicitors for Defendants.

The foregoing appeal is allowed.

Dated March 4, 1916.

J. E. Sater,
United States District Judge.

Assignment of Errors.—Filed March 4, 1916.

In the District Court of the United States for the Southern District of Ohio, Eastern Division,
The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of Ohio, Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Harry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.

[No. 51]

Assignment of Errors.

The defendant, Harry T. Hall, superintendent of banks and banking of Ohio, respectfully specified as his reasons for appealing from the decree entered upon the 28th day of February, 1916, on the bill of complaint of plaintiff for an interlocutory injunction the following assignment of errors:

First: That the court erred in granting the interlocutory injunction against said defendant, Harry T. Hall, superintendent of banks and banking of the state of Ohio, his employes and subordinates, and each of them individually, from enforcing or attempting to enforce the provisions of Sections 6373-1 to 6373-24, inclusive, of the General Code of Ohio, contained in Volume 103 of the Laws of Ohio, pages 743-753, and the acts amendatory thereof.

Second: That the court erred in declaring Sections 6373-1 to 6373-24, inclusive, of the General Code of Ohio, unconstitutional, null and void as being in violation of Section 8 of Article I of the Constitution of the United States.

Third: That the court erred in declaring Sections 6373-1 to 6373-24, inclusive, of the General Code of Ohio, unconstitutional, null and void as being in violation of Section 1 of Article XIV of the Constitution of the United States.

The defendant therefore prays that the judgment heretofore rendered be reversed; that the interlocutory injunction therein allowed be dissolved and that the defendant be restored to all things he has lost by reason thereof.

Harry T. Hall

By Edward C. Turner,
Attorney General of Ohio.

Henry S. Ballard,

First Assistant Attorney General.

Clarence D. Laylin,

Solicitors for Defendants.

Order Allowing Appeal.—Filed March 4, 1916.

In the District Court of the United States for the Southern District of Ohio, Eastern Division.

The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of Ohio, Plaintiff.

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Harry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.

[No. 51]

Order Allowing Appeal.

Upon motion of Edward C. Turner, attorney general of Ohio, solicitor for the defendant, it is ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered in this cause on the 28th day of February, 1916, be and the same is hereby allowed and it is ordered that a certified transcript of the record herein be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of \$500.00.

J. E. Sater,

Judge United States District Court, Southern District of Ohio, Eastern Division.

Appeal Bond.

[Filed March 7, 1916.]

Know all men by these presents, that we, Harry T. Hall, superintendent of banks of the state of Ohio, as principal, and American Surety Company of New York, a corporation organized and existing under the laws of the state of New York, as sureties, are held and firmly bound unto The Geiger-Jones Company, a corporation organized and existing under the laws of the state of Ohio, in the full and just sum of five hundred (\$500.00) dollars, to be paid to the said The Geiger-Jones Company, their certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this seventh day of March, in the year of our Lord one thousand nine hundred and sixteen.

Whereas, lately at a session of the District Court of the United States for the Southern District of Ohio, Eastern Division, in a suit depending in said court, between the said The Geiger-Jones Company, plaintiff, and the said Harry T. Hall, superintendent of banks of

the state of Ohio, defendant, an order or decree was rendered against the said Harry T. Hall, superintendent of banks of the state of Ohio, defendant, and the said Harry T. Hall, superintendent of banks of the state of Ohio, defendant, having obtained an order of appeal and filed a copy thereof in the clerk's office of the said court to reverse the order or decree in the aforesaid suit, and a citation directed to the said The Geiger-Jones Company, plaintiff, citing and admonishing them to be and appear at a session of the United States Supreme Court.

Now, the condition of the above obligation is such, that if the said Harry T. Hall, superintendent of banks of the state of Ohio, shall prosecute his appeal to effect, and answer all damages and cost if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Harry T. Hall, [Seal]
Superintendent of Banks, State of Ohio.
American Surety Company of New York, [Seal]
By Thos. J. Davis,
Resident Vice President.
Attest: L. H. McGowan,
Resident Assistant Secretary.

Sealed and delivered in the presence of—
Margaret Crowley.
J. M. Elliott.

Approved by J. E. Sater, District Judge.

Citation.

[Filed March 21, 1916.]
United States of America, Sixth Judicial Circuit, ss.:
To the Geiger-Jones Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the City of Washington, within thirty days from the date hereof, pursuant to an appeal, filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Eastern Division, wherein Edward C. Turner, attorney general of the state of Ohio, and Harry T. Hall, superintendent of banks and banking of the state of Ohio, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, chief justice of the United States, this 17th day of March, in

the year of our Lord one thousand nine hundred and sixteen, and of the independence of the United States of America the one hundred and fortieth.

J. E. Sater,

U. S. District Judge, Southern District of Ohio.
State of Ohio, County of Franklin, ss.

On this 21st day of March A. D. 1916, personally appeared before me, a notary public in and for said county, Henry S. Ballard, and made oath that he delivered a copy of within citation to Timothy S. Hogan, solicitor for appellee.

Henry S. Ballard.

Sworn to and subscribed before me this 21st day of March, 1916.

W. F. McNamara,

Notary Public in and for Franklin County, Ohio.

Service of copy of within citation acknowledged this 21st day of March, 1916.

Timothy S. Hogan,
Solicitor for Appellees.

Precipe.

[Filed March 21, 1916.]

In the District Court of the United States for the Southern District of Ohio, Eastern Division.
The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of Ohio, Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Harry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.

[No. 51]

To the Clerk: Please prepare transcript for appealing to the Supreme Court of the United States, under Section 266 of the Judicial Code, from the order made in the above entitled cause February 28th, 1916, by Judges Warrington, Hollister and Sater, granting an interlocutory injunction, including the following:

Copy of the following pleadings and documents:

- (a) Bill of Complaint.
- (b) Motion for temporary restraining order.
- (c) Motion for interlocutory injunction.
- (d) Memorandum opinion of Judge Sater granting restraining order.
- (e) Entry granting restraining order.
- (f) Entry submitting case.
- (g) Memorandum opinion filed by Judges Warrington, Hollister and Sater on February 10th, 1916, granting interlocutory injunction.

- (h) Order granting interlocutory injunction entered February 28th, 1916.
- (i) Petition for appeal.
- (j) Assignment of errors.
- (k) Order allowing appeal.
- (l) Appeal bond.
- (m) Citation with acknowledgment of service thereon.
- (n) Precipe.

Edward C. Turner,
Attorney General of Ohio.
Henry S. Ballard,
First Assistant Attorney General.
Attorneys for Defendant.

CLERK'S CERTIFICATE.

The Geiger-Jones Company, a Corporation Organized and Existing Under the Laws of the State of Ohio, Plaintiff,

vs.

Edward C. Turner, Attorney General of the State of Ohio, and Harry T. Hall, Superintendent of Banks and Banking of the State of Ohio, Defendants.

[No. 51.]

The United States of America, Southern District of Ohio, Eastern Division, ss.:

I, , clerk of the District

Court of the United States of America within and for the division and district aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above entitled cause, as the same appears of record and on file in the clerk's office in said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Columbus,

Ohio, this day of , 1916.
(Seal.)

Clerk.

By _____
Deputy.